

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

GREGORY C. KAPORDELIS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

CRIMINAL ACTION

NO. 1:04-CR-249

CIVIL ACTION

NO. 1:11-CV-280-CAP

O R D E R

The movant's motion to ignore the objections to the magistrate judge's report and recommendation filed on January 12, 2012 [Doc. No. 572] is GRANTED; the movant's motion to replace the previously filed objections with new objections [Doc. No. 573] is GRANTED.

After carefully considering the report and recommendation of the magistrate judge, together with the objections thereto, the court adopts the report and recommendation as the opinion and order of this court.

The movant's motion to amend his section 2255 motion [Doc. No. 568] is GRANTED. In his amendment, the movant argues that United States v. Wetherald, 636 F.3d 1315 (11th Cir. 2011), warrants a reversal of his conviction. That case discussed the ex post facto implications of United States v. Booker, 543 U.S. 220 (2005), in that if applying the United States Sentencing Guidelines in effect at the time of the sentencing would result in a harsher penalty, a defendant must be sentenced under the Guidelines in effect at the

time he committed the offense. The movant argues that he was sentenced under the wrong Guidelines.

Wetherald does not help the movant. The Wetherald court specifically referenced the Eleventh Circuit's refusal to overturn the movant's conviction in his original appeal in United States v. Kapordelis, 569 F.3d 1291 (11th Cir. 2009). "In *Kapordelis*, we refused to overturn a sentence based on incorrectly calculated Guidelines because the district court made it clear it would have imposed the same sentence regardless." Wetherald, 636 F.3d at 1323.

The movant's motion to vacate, set aside, or correct his sentence [Doc. No. 536] and his motion as amended [Doc. No. 568] are DENIED.

SO ORDERED, this 6th day of March, 2012.

/s/Charles A. Pannell, Jr.  
CHARLES A. PANNELL, JR.  
United States District Judge